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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,814	09/08/2003	Kevin J. Surace	M-15249US	2870
7590	05/25/2006		EXAMINER	
Alan H. MacPherson MacPherson Kwok Chen & Heid LLP 1762 Technology Drive, Suite 226 San Jose, CA 95110			NGUYEN, CHI Q	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/658,814	SURACE ET AL.	
Examiner	Art Unit		
Chi Q Nguyen	3635		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 22 February 2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-15, 24-26, 40 and 41 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 2 is/are allowed.

6) Claim(s) 1, 3-4, 7-10, 14-15, 24-26 and 40-42 is/are rejected.

7) Claim(s) 5, 6 and 11-13 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 08 September 2003 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

This Office action is in response to the applicant's amendment filed on 2/22/2006.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/8/2006 has been entered.

With further consideration, the previous stated allowable subject matters being withdrawn. And with new art and rejections are presented as following:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard claims 24, the cited limitation "wherein the internal constraining layer comprises a cellulose material", which sets forth only a cellulose material for the internal constraining layer. However the depending claim 26, then further defining the constraining layer is selected from the group consisting of cellulose, wood,

metal, plastic, vinyl, plastic composite and rubber makes the claim confusing and indefinite because the depending claim cannot contradict or broaden the claim it depends from.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 4, 7-9, 15, and 40-42 are rejected under 35 U.S.C. 102(e) as being anticipated by NPL (Non Patent Literature-IES 2000, Atlanta.com/product, dated 7/2/2003).

In regard claim 1, IES teaches QuietWood product (pg. 6) two external layers of a non-metallic layers (sheetrock), at least one internal non-honeycomb constraining layer, and two internal layers of a viscoelastic glue separated by said at least one internal constraining layer.

In regard claim 3, wherein said two external layers comprise each of selected thickness sheet rock or gypsum board (see page 6 and description line 4).

In regard claim 4, wherein said glue comprises a viscoelastic material capable of absorbing sound (figure in page 6, and line 1 of description).

In regard claims 7, 15, IES teaches ultra quiet rock laminated panel (page 6), at least one internal layer of a selected material (comprises a layer of a vinyl), two internal layers of a viscoelastic glue, one such layer on each side of said internal layer; and at least one additional layer of non-metallic (sheet rock) on the other side of each internal layer of viscoelastic glue.

In regard claim 8, wherein said at least one additional layer comprises an external layer of first sound absorbing material (sheetrock or Gypsum base board-see specification chart for material characteristics- page 6).

In regard claim 9, wherein said external layer of a first sound absorbing material comprises gypsum (see description line 4, pg. 6).

In regard claim 40, NPL teaches a laminated structure comprising a layer of first non-metallic (sheet rock) having two surfaces, one of said two surfaces comprising an outer surface; a layer of viscoelastic glue on the other of said two surfaces; and a layer of a second material (constraining layer of vinyl) over said viscoelastic glue (see page 6).

In regard claim 41, NPL teaches the claimed invention as stated, wherein said layer of second material is ($\frac{1}{4}$ ") is falling in a range of $1/10^{\text{th}}$ to $\frac{1}{2}$ the thickness of the first material ($\frac{5}{8}"), which is $2/5$ of the first material thickness.$

In regard claim 42, NPL teaches a laminated structure comprising a layer of first non-metallic (sheetrock) material having two surfaces, one of said two surfaces comprising an outer surface; a layer of viscoelastic glue on the other of said two

surfaces; and a layer of second non-metallic (sheetrock) material over said viscoelastic glue (see figure on the top of page 6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 14, 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over NPL (IES 200 Atlanta Product).

In regard claim 8, NPL teaches the basis structural elements for the sound absorbing laminated panel as stated except for wherein said at least one additional layer comprises an external layer of a first sound absorbing material. At the time of the invention, it would have been obvious to a person having an ordinary skill in the art to add another exterior of sound absorbing material, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

St. Regis Paper Co. v. Bemis Co. 193 USPQ 8. The motivation for doing so would have been to provide a thicker panel thus providing more sound proofing effectiveness.

In regard claims 14, 24-26, NPL teaches a layer of first non-metallic material, having two surfaces, at least one internal constraining layer, and two internal layers of a viscoelastic glue separated by said at least one internal constraining layer, wherein the internal constraining layer comprises a closed cell vinyl (see figure on pg. 6). However,

NPL does not teach specifically the constraining layer comprises a cellulosic material such as wood. At the time of the invention, it would have been obvious of a design choice for a person having an ordinary skill in the art to choose wood over vinyl for the internal constraining layer for economic reasons because wood should be less expensive than vinyl material.

Allowable Subject Matter

Claims 5-6, and 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 2 is allowed.

Response to Arguments

Applicant's arguments with respect to claims 1, 3-15, 24-26, and 40-41 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Niwa teaches sound absorbing material.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (571) 272-6842. The examiner's right fax number is (571) 273-6847.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairdirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

CQN
Cn
05/3/2006



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